

FRAUDULENT CONVEYANCES—*Continued.*

- res factas* where personal property was to be reached; yet, there are some exceptions to the rule. *Ib.*
3. The case of a guardian suing in behalf of his wards, who is the surety on the bond given by the former guardian, and therefore cannot himself maintain an action at law, or the bond might possibly be regarded as constituting such an exception to the rule. *Ib.*
  4. But the act of 1835, ch. 380, sec. 2, expressly exempts creditors from the obligation to obtain judgments, before they can proceed, in equity, to vacate fraudulent conveyances. *Ib.*
  5. The conveyances, in this case, were vacated upon proof that they embraced all the grantor's property, real and personal; that they were made to his daughter, who never did, and never could, have paid the consideration expressed in them; that at the time of executing them, he was greatly in debt, and shortly afterwards applied for the benefit of the insolvent laws, returning no property in his schedule; and that the whole transaction was a scheme to defraud his creditors. *Ib.*
  6. To render an assignment valid under the 13th of Elizabeth, it is not enough to show that it was made for a valuable consideration, for that alone is not sufficient, it must also be *bona fide*. *Powles vs. Dilley*, 119.
  7. It is well established, that by the common law, a debtor may secure one creditor, to the exclusion of others, either by payment or a *bona fide* transfer of his property. *Ib.*
  8. The transfer to a favored creditor, to be void under our insolvent system, must be made with a view, or under an expectation, of taking the benefit of the insolvent laws, and also with intent thereby to give him an undue and improper preference—both interests must be found to exist, or the transfer will not be disturbed. *Ib.*
  9. The intent may be deduced, as in other cases, from facts and circumstances, but these must be such as, by *fair inference*, will bring the mind to the conclusion that the unlawful intent existed. *Ib.*
  10. The circumstances of this case, distinguished from those of *Dulany vs. Hoffman*, 7 *Gill & Johns.*, 107. *Ib.*
  11. Whether a conveyance is fraudulent or not, under the statute of 13 Elizabeth, ch. 5, depends upon its being made upon a good consideration and *bona fide*. It is not sufficient that it is upon a good consideration or *bona fide*. It must be both, and if not, is void as to creditors, and the words "good consideration," in the statute, must be understood to include valuable, as well as good. *Glenn vs. Randall*, 220.
  12. Where deeds are impeached for fraud, and it is shown by the admissions of the answers, that the considerations upon which they profess to have been executed, were not paid in the manner and form, as declared upon their face, the party claiming under them will not be permitted to prove any other consideration in their support. *Ib.*
  13. But this rule does not apply to a case where the object is not to set up any other additional consideration to the one mentioned in the deed, but to prove that *that* very consideration was paid, not to the grantor himself, but to his creditors, with his knowledge and at his request. *Ib.*